

# LAW LIBRARY

## ARIZONA ATTORNEY GENERAL

Opinion 63-36

R-390

September 25, 1963

REQUESTED BY: THE HONORABLE JIM YOUNG  
Arizona House of Representatives

OPINION BY: ROBERT W. PICKRELL  
The Attorney General

### QUESTIONS

1. Do the offices of State Committee Chairman, Secretary and Treasurer under the provisions of A.R.S. §16-234 have a term of office?
2. Do the statutes provide for procedure in the event of a vacancy in said office or do they provide when a vacancy exists?
3. If one of the three officers can be removed "for cause" what constitutes "cause"?

ANSWER: See body of opinion.

Party organization and government in the State of Arizona is a matter of statute and, therefore, a matter of legitimate concern to a state legislator. The statutes are A.R.S. §§ 16-231 through 16-239. They were originally adopted in 1912 and the changes since then have been largely in the area of proportional representation necessitated by our growing population.\* While it is generally conceded that officers or members of political parties pursuant to statute are not "public officers" within the usual meaning of that term, they are statutory officers and our statutes must be considered in answering any questions concerning them. A.R.S. §16-234 provides that "The state committee shall meet at the State Capitol at twelve o'clock noon on the last Monday of the month in which the primary election for state and county offices is held, and organize by electing from its membership a chairman, secretary and a treasurer." The statute itself does not provide specifically for a definite term of office for any of the three officers. However, the general rule of law is to the effect that a term of office may be fixed by

---

\* With one exception noted infra.

law, although not so stated in express terms in the statute where such a result is properly inferred from the construction of the statute as a whole. Boyd v. Hunington, 215 Cal. 473, 11 P.2d 383; State v. Blodworth, 134 Fla. 369, 184 So.1; State ex rel Barnes v. Holbrook, 136 Conn. 312, 70 A.2d 556; 67 C.J.S. Officers, §44. While these cases deal with public officers it is felt that the same rule should apply to political officers and has actually been applied in the case of Williamson v. Killough, 46 So. 2d 24, 185 Ark. 134. The Supreme Court of Arkansas stated as follows:

"Under the statute, the electors elect their committeemen, and they are elected for a definite time, and they have the right, therefore, to serve as such until, under the statute, conditions arise which constitute a vacancy. It is then and then only, that the central committee, as a body, is authorized to elect their successors."

The statute at issue was an initiative measure adopted by the people of Arkansas for the governing of political and party organizations. The original law is found in Digest of Statutes of Arkansas, Crawford and Moses, 1921, pp. 1075-1081, and nowhere contains a statement that the term of office shall be for a specific number of years. Like ours, it calls for elections preceding the regular primary elections. But the Supreme Court of Arkansas had no difficulty in saying that since the elections must be held every two years that the term of office was in effect a definite two year term.

It is, therefore, our conclusion that since the offices of Chairman, Secretary and Treasurer must be filled by election or re-election over two years, that the term of office is a two year term.

The statute itself, however, contains no statement as to when and under what conditions anyone of the offices might become vacant. \* But obviously vacancies must occur. The most

---

\* The original law did. See Rev. Stats. 1913 §3044(7). This was deleted in 1943, presumably to allow the party constitutions or by-laws to regulate this field.

normal occasion would be when the officer dies or resigns. But it is a general principle, particularly with reference to political officers, that they may be removed "for cause." If the statute does not define what "cause" is, the constitution or by-laws of the organization then may contain the reasons. If they do not do so then general legal principles as to what constitutes "cause" must be resorted to.

See for example the language in Battipaglia v. Executive Committee, 191 N.Y.S. 2d 288, 20 Misc. 2d 226 which held:

"It is enough to know that the words 'for cause' have a well understood legal meaning which excludes arbitrary action."

It would seem clear that any of the reasons given for impeachment of public officers under Title 38 would be sufficient, as suggested by the New York case, including neglect of duty, general unfitness for the office.

It has been suggested that in the absence of a statute to the contrary, a political committee has the right and power to remove its own officers without being required to assign any reason for its action. 29 C.J.S. Elections, §118. The case cited for this authority is Walker v. Grice, 159 S.E. 914, 162 S.C. 29. That particular case the complaining officers were the Secretary and Treasurer of the state and the constitution provided that they (unlike the Chairman and Vice-Chairman who were elected by the party convention) were appointed by the executive committee (in which committee members were elected for specific terms). These persons were, therefore, more in the nature of employees rather than elected party officers. It should also be noted that there was no party organization statute in South Carolina and that the court was dealing solely with the constitution of the political party. In another aspect of the case the court held that a county party treasurer, who was elected by the local county club, could not be removed except in accordance with the constitution. With regard to these particular persons in the case the South Carolina Supreme Court had this to say, (and it is to be kept in mind that this was not even a statutory political party organization):

"The Court is concerned only with the legal rights involved - not with political situations. The very justification for the existence of the courts is that controversies may be determined by resort to the orderly process of law rather than by resort to force . . .

"It has, therefore, been long recognized in this state, as the province of the court to see that the established principles of law and order in the conduct of party organizations be maintained, and associations or groups of individuals, although organized on a political basis and having a political nature in purpose, are subject to the jurisdiction of the courts."

See also, People ex rel Coffey v. Democratic General Committee, 164 N.Y. 335, 58 N.E. 124 (1900). See the language in Battipaglia, supra:

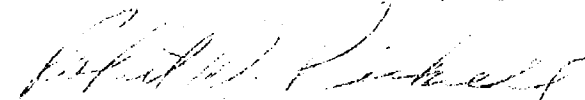
"While formerly political parties were voluntary organizations unrecognized by statute, with the management and control of which a court would not interfere (citation omitted) they are though still unincorporated associations (citations omitted) now recognized by statute, and have statutory rights and duties."

It would, therefore, be impossible for us to render an opinion as to what constitutes "cause" for removal. The initial determination and one to which the courts must attach great weight is the determination of the party itself. If, in the absence of statutes, the constitution and by-laws or (in their absence) general principles of law, show the existence of good cause, our opinion based, as it must be, solely on statutes, would be out of place. Even the opinion of a court on the matter should not be a substitution of the court's judgment for that of a properly constituted political committee, but merely be an inquiry into whether or not the alleged act

Opinion 63-36  
R-390  
September 25, 1963  
Page 5

is legal cause and whether there is reasonable evidence to support it.

In conclusion, therefore, may we reiterate that it is our opinion that the three officers are elected under A.R.S. §16-234 for two year terms and that vacancies can arise through normal causes such as death, resignation, departure from the jurisdiction, etc., or through removal for cause. Inasmuch as no Arizona statute defines "cause" we cannot. But the political party itself can determine what constitutes cause. Each case must be judged on its own facts, and the office of the Attorney General is not the proper office to so judge.

  
ROBERT W. PICKRELL  
The Attorney General

RWP:PMH.eh:db